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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Commissioners: Evelio Fernandez Arevalo, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.
In accordance with Article 17(2)(a) of the Commission’s Rules of Procedure, Commission member Susana Villaran, a Peruvian national, did not participate in the discussion or decision of this case.
Dated: 27 February 2004
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I. SUMMARY

1. On August 19, 2002, Hilda Moore Chumbimuni and others (hereinafter “the petitioners”[FN2]) lodged petitions with the Inter-American Commission on Human Rights (hereinafter the “Commission,” the “Inter-American Commission,” or the “IACHR”). The petitions alleged that the State of Peru (hereinafter “Peru,” the “State,” or the “Peruvian State”) had violated certain rights of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), to the detriment of the Challapalca Prison inmates who had been transferred there from Yanamayo prison on September 21, 2001,[FN3] and to the detriment of those inmates’ families. The petitioners alleged that the inmates had been detained arbitrarily, tortured, and subjected to cruel, inhuman and degrading punishment, as they were held in a prison far from their families, under grossly substandard prison and visiting conditions.

[FN2] The two original petitions, dated August 19, 2002, were signed by Hilda Moore Chumbimuni, Isabel Medrano Villarroel, Libia Campos Bullón, Hilda Bendezú Vega, Lucía Espinoza Cerna, Enma Fuente Flores, María Linares Farro, José Lopez Medrano, Luisa Atahualpa Inga and Juan Ramírez Quijara.

[FN3] The petition concerns inmates in the Challapalca Prison, transferred there from Yanamayo Prison on September 21, 2001. Those specifically named in the petition were: Adrian Ortega Pardo, Alberto Ramírez Quijada, Alejandro Anyosa Ochoa, Alejandro García Hernandez, Alejandro García Inuma, Alfredo Woll Enriquez, Antonio Bendezú Vega, Carlos Bravo Quijano, Ceril Cachuas Aquino, Cesar Machaca Apaza, Cesar Oró Chilse, Cesar Pardo Ñaringaño, Eder

Alferez Mesco, Edvin Ramiro Ritual, Edward I. Solano Ascanio, Emilio Romero Mera, Erick Montero Arteaga, Fernando Juan Perez Centeno, Fortunato Soto Tarazona, Franklin Esquivel Santos, Germán Campos Malqui, Gregorio Lavado Valverde, Gregorio Príncipe Picón, Hector Muñoz Elguera, Hermán Cachuas Aquino, Hermes Rubio Hugo, Isael Vasquez Nuñez, Jesús Orozco Livia, Jesús Rafael Torres Hurtado, Jorge Nako Fuentes, José Arcela Chiroque, José Galindo Sedano, José Miguel Atahualpa Inga, José Zamora Perez, Juan Carlos Chavez Umerez, Juan Isla Trinidad, Juan Perez Zenteno, Juan Quispe Castro, Juan Valencia Moore, Julio García Inuma, Julio Gutierrez, Leo Humberto Peña Gutierrez, Leoncio Prado Coronado, Lidio Rene Torres Luna, Luis Alvarez Espinoza, Luis Enrique Lopez Medrano, Luis Mogrovejo Bereche, Manuel Cornelio Chinchay, Miguel Anguel Dipas Vargas, , Miguel Cuno Choquehuanca, Nicéforo Bartolomé Melitón Cárdenas, Oscar Duque Rojado, Pedro García Vizalote, Román Rengifo Murrieta, Sandro Melendez León, Sebastián Cabanillas Rodas, Silver Ortega Pardo, Victor Campos Bullón, Wilman Castro Rosas, Wilson García Asto.

2. The State used various arguments concerning the facts described in the complaint but raised no objection concerning the petition's admissibility.

3. In this report, the Commission concludes that, prima facie, the allegations made in the petition tend to establish facts that could constitute violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture. The alleged victims are the inmates at the Challapalca Prison on whose behalf the petition was lodged. The Commission has also examined the admissibility requirements established in the Convention and concludes that the petition is admissible in regard to the allegations of violations of rights recognized in Articles 5(1), 5(2), 5(3), 5(4), 5(6) and 25 of the American Convention in connection to Article 1(1), and the Inter-American Convention to Prevent and Punish Torture. In this Report the Commission decides to notify the State and the petitioners of this decision and to publish it.

II. PROCESSING WITH THE COMMISSION

4. On August 19, 2002, the IACHR received two communications signed by Hilda Moore Chumbimuni and others, lodged on behalf of their relatives who were inmates at Challapalca Prison. In a communication dated April 14, 2003, the petitioners added more information to the original complaint.

5. The Commission forwarded the pertinent parts of the above-mentioned petitions to the State by notes dated November 5, 2002, April 29, 2003 and April 29, 2003. The Peruvian State addressed the complaint in communications dated March 31, 2003 and August 15, 2003.

III. THE PARTIES' POSITIONS

A. The petitioners

6. The petitioners allege events that took place at Challapalca Prison in relation to the inmates and their relatives when they visit them. They are also protesting the circumstances

under which the inmates were transferred from Yanamayo Prison to Challapalca Prison in September 2001. As background information, they recount that the inmates were arrested in application of the counter-terrorism laws adopted during the administration of Alberto Fujimori Fujimori.

7. The focus of the petitioners' complaint is the physical and psychological violence to which the inmates have allegedly been subjected, the irregularities surrounding their treatment and the prison conditions at Challapalca Prison. As background information, the petition states that those inmates had been incarcerated in the Miguel Castro Castro prison in Lima, and were then transferred to the Yanamayo Prison in Puno province, having been brutally treated. Neither attorneys nor families of the transferred inmates were advised of the move. At Yanamayo Prison, the inmates were held in isolation and had no contact with the outside world. The prison conditions were inhuman and the inmates were subjected to constant searches, and seizure of work materials, books and other personal property. Food sent by families and family visits were denied. The brutal treatment to which they were frequently subjected resulted in the death of Carlos Ponce Pérez. Dolores Galindo Sedano filed a petition of habeas corpus in connection with his death, but it was subsequently declared unfounded.

8. On September 21, 2001, the inmates were transferred to Challapalca Prison in the department of Tacna, after being brutally treated by Peruvian National Police. The treatment left abrasions and contusions, confirmed in Medical Report No. 123-01-INPE-24-821-AS, dated September 21, 2001. On February 12, 2002, the Mixed-Law Provincial Prosecutor for Tarata filed a criminal complaint against the warden of Challapalca Prison, Fausto Alfonso Garay Nuñez, for abuse of authority, failure to comply with prison-system regulations and psychological torture. The complaint recounts the conclusions reached as a result of the visit that the Attorney General's Office made to Challapalca Prison on November 14, 2001, which found that "34 political inmates had been the victims of a variety of abuses of authority, violations of the prison-system regulations such as DD 005 and 006, psychological torture and isolation, for no reason and without provocation; these events have been occurring since they were transferred from the Yanamayo INPE to the INPE at Challapalca. They arrived with wounds, contusions, showing obvious signs of torture, as can be verified from the medical check-ups on record in the small clinic within the Challapalca (...)"[FN4]

[FN4] Complaint N° 006-2002 of February 11, 2002, filed by the Mixed-Law Provincial Prosecutor for Tarata, Americo Chaparro Guerra, to the Criminal Judge.

9. As the petition reports, Challapalca Prison is located at an altitude of 4650 meters, at a site where the climatic conditions are ill-suited to human survival. This has a serious effect on the inmates' health. Compounding the problem is the inadequacy of the prison facility itself, which does not provide inmates with protection from the bitter cold. At night, temperatures can drop as low as minus 15 degrees Celsius. Another problem is the lack of specialist physicians and medications.

10. The petitioners assert that the location of the Challapalca Prison, which is in a remote, inhospitable place, makes it difficult for them to see the inmates, most of whom are from Lima. The means of transportation available for wives, mothers and other family members to visit the inmates is a truck, which has no safety features. It is a two-day trip from Lima to Masacruz, and from there another seven hours to Challapalca. Once there, the visitors—male and female alike—must stay in a building that is in very poor condition, sparsely furnished, with mattresses on the floor and no heat.

11. As to the treatment received at the prison, the petitioners allege that their relatives are in some cases forced to share cells with common criminals; the water is not safe to drink; there are no dentists; the inmates are frequently denied direct-contact visits with family and permitted only non-contact visits instead, and then only for an hour a week; when their turn comes to receive a contact visit with family members for 8 hours a week, they find themselves being punished constantly, without explaining why; the food is insufficient and the diet unbalanced; only limited amounts of the food, blankets and reading materials sent by relatives are allowed into the prison.

12. Because of conditions at the Challapalca Prison, Emiliano Álvarez Lazo and others filed a petition of corrective habeas corpus on behalf of Juan Islas Trinidad and others. In a November 19, 2002 ruling, the Constitutional Court found that the altitude and climate conditions of the prison were similar to those of other prisons in Peru and did not constitute inhuman treatment. The Court also held that the prison's remote location adversely affected family-visiting rights and the re-socialization and re-education purpose the prison was intended to serve, as stipulated in Article 139, paragraph 14 of the Constitution. It therefore ordered the State to facilitate visits by family members. It also held that the National Institute of Prisons [Instituto Nacional Penitenciario] (INPE), and specifically the Puno Regional Director's Office, were responsible for any act that jeopardized the health of the plaintiffs. The court therefore ordered that INPE and the Puno Regional Director's Office were to provide adequate medical care and immediately transfer inmates who are in bad health.

13. The petitioners point out that the Constitutional Court's ruling did not solve the problems of the human rights violations denounced and was at variance with the recommendation made by the Inter-American Commission on Human Rights to the effect that Challapalca Prison be declared unfit and closed for good.[FN5] They also note that the ruling did not take account of the statements made by the Ombudsman's Office[FN6] and the United Nations Human Rights Committee[FN7], which also declared that the prison did not meet international standards for the treatment of prisoners.

[FN5] The petition makes reference to recommendation 12, under chapter IX of the Report on the Situation of Human Rights in Peru, June 2000.

[FN6] The petition is referring to Ombudsman's Report No. 29.

[FN7] The petition is referring to the Concluding Observations of the United Nations Human Rights Committee in its 70th period of sessions.

B. The State

14. After receiving copies of the pertinent parts of the petition, the State replied by communications dated March 31, 2003 and August 15, 2003.

15. According to the information sent by the State, the inmate population at Challapalca Prison has been decreasing gradually and the prison will be closed, as announced by the Minister of Justice and the President of the Republic.

16. However, the State also asserted that Challapalca Prison is fit to receive inmates from anywhere in the country, having been inspected by the INPE. On February 21, 2003, INPE issued a document certifying that the cellblocks were in good condition, with the exception of cellblock 1, and that the prison had all the most essential medications as well as surgical material.

17. The State also reported that on February 21, 2003, following the Constitutional Court's November 19, 2002 ruling, orders were given to the effect that all inmates were to be examined to determine whether they should be transferred for health reasons. The State also reported that, with the exception of inmates Ramírez Quijada and Rodríguez Delgado—who refused chest auscultation-, all the inmates were considered to be in good health.

18. Concerning the prison's accessibility to family members of inmates, the State also reported that a plan for facilitating travel to the prison was now under study for budget purposes.

IV. ANALYSIS

A. The Commission's competence *ratione personae*, *racione loci*, *ratione temporis* and *ratione materiae*

19. The Commission notes that Peru has been party to the American Convention on Human Rights since July 28, 1978, the date on which it deposited its instrument of ratification.

20. Under Article 44 of the American Convention, the petitioners are authorized to lodge petitions with the Commission. The alleged victims the petition names are individuals and identifiable,[FN8] whose Convention-recognized rights and freedoms Peru pledged to respect and ensure. The Commission is, therefore, competent *ratione personae* to examine the petition.

[FN8] In accordance with the decision of the Inter-American Court of Human Rights in the Panchito López case (June 21, 2002), for the proceedings on the merits the petitioners will have to identify, by name, any persons not named in the original petition who are relatives of the Challapalca inmates who were transferred there from Yanamayo Prison on September 21, 2001.

21. The Commission is competent *ratione loci* to take cognizance of this petition, because the latter alleges violations of rights protected under the American Convention, purported to have occurred within the territory of a State party to the Convention. The Commission is also

competent *ratione temporis*, inasmuch as the obligation to respect and ensure the rights protected under the American Convention was already in effect for the State on the date the facts alleged in the petition were said to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition alleges violations of human rights protected under the American Convention.

22. The Commission is also competent to analyze the petition in regard to allegations that, *prima facie*, tend to establish facts that would be violations of the Inter-American Convention to Punish Torture, which Peru ratified on March 28, 1991.

B. The admissibility requirements the petition must meet

1. Exhaustion of remedies under domestic law

23. In the matter put to the Commission for consideration, the parties have raised no objections alleging noncompliance with the admissibility requirements set forth in Article 46 of the American Convention. That Article provides that the admissibility of a petition is subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

24. Exhaustion of the remedies under domestic law is a rule that the Convention establishes so that a State might have an opportunity to solve its problem internally, using its own internal procedures, so that it does not have to answer to the problem before an international body. That requirement is, therefore, a means for the State to defend itself and, as such, can be waived by the State, even tacitly, as happened in the instant case.[FN9] The Commission also notes the November 19, 2002 judgment of the Constitutional Court that exhausted the remedies under domestic law.

[FN9] Inter-American Court of Human Rights, *Loayza Tamayo Case*, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40; *Castillo Páez Case*, Preliminary Objections, Judgment of January 30, 1996, Series C No. 24, para. 40.; *Neira Alegría et al. Case*, Preliminary Objections, Judgment of December 11, 1991, Series C No.13, para.30.

2. Time period for lodging a petition

25. Similarly, the six-month rule that Article 46(1)(b) establishes for lodging petitions is inextricably linked to the exhaustion of local remedies and can therefore be tacitly waived by the State, as happened in this case.[FN10]

[FN10] Inter-American Court of Human Rights, Neira Alegría et al. Case, Preliminary Objections, Judgment of December 11, 1991, Series C No.13, para. 30.

26. The Commission therefore concludes that the requirements established in Articles 46(1)(a) and 46(1)(b) of the Convention have been met.

3. Duplication of international proceedings and international res judicata

27. Based on the information presented by the parties, there is nothing in the case file to indicate that this matter is pending with another international arrangement for settlement or that the petition is substantially the same as one already examined by this or any other international body. The IACHR therefore concludes that the exceptions allowed under Article 46(1)(c) and Article 47(d) of the American Convention do not apply.

4. Characterization of the facts

28. The petition asserts that the inmates were subjected to cruel, inhuman and degrading treatment in Challapalca Prison, in the form of abuse and the unhealthy and substandard conditions in which the inmates are kept. At its 118th session, the Commission approved and published the Special Report on the Human Rights Situation at the Challapalca Prison, wherein it concluded that the conditions of detention of the Challapalca Prison inmates may constitute a violation of the right to humane treatment and the right to be deprived of liberty in dignified and safe conditions, recognized in Article 5 of the American Convention.[FN11] This is not an advance analysis of the merits of this case, as the Special Report in question concerns the general conditions, not an individual case.

[FN11] IACHR, Special Report on the Human Rights Situation at the Challapalca Prison, Department of Tacna, Republic of Peru, 2003, para. 117.

29. The petition alleges that because of Challapalca prison's remote location, the inmates' wives, mothers, fathers and children have great difficulty getting to and entering the prison to visit their loved ones or even contacting them. Therefore, the IACHR considers the petition admissible regarding the alleged violation of Article 5 of the American Convention, underscoring that it will determine the question of whether the Convention was actually violated when the merits of the case are examined.

30. The petition asserts that the Constitutional Court's November 19, 2002 ruling did not resolve the human rights violations denounced. The Commission therefore concludes that, prima facie, the allegations may indicate a violation of Article 25 of the American Convention.

31. As background information for the case, the petitioners point out that the inmates were convicted in application of the counter-terrorism laws in force in Peru. The IACHR has developed the concept of violations per se of the American Convention in cases where the

accused was prosecuted, tried and sentenced in the military criminal courts and in the regular courts in Peru, under the counter-terrorism laws, beginning with Decree Law 25475 and its related provisions.[FN12] Nevertheless, as this is not the crux of the complaint under study, the Commission will not address those violations, although the petitioners retain the right to file separate petitions on this question. Indeed, the Commission is currently processing petitions involving a number of the alleged victims in the present case and claiming violation of their judicial guarantees. [FN13]

[FN12] See, in this regard, Inter-American Court of Human Rights, Cantoral Benavides Case, Judgment of August 18, 2000. Series C, No. 69, paras. 73, 145, 153, 154, 166, 172, 178; Castillo Petruzzi et al. Case, Judgment of May 30, 1999. Series C No. 52, paras. 16, 86, 119, 198 and 207; and Loayza Tamayo Case, Judgment of September 17, 1997, Series C No. 33, paras. 46(c), 46(i)-46(k), 51, 67-68; IACHR, Case 11.182, Report 49/00, Carlos Florentino Molero Coca et al. Case, Peru, April 13, 2000, para. 137.

[FN13] See, for example, IACHR, Case 12.413, Wilson García Asto, Perú; and Petition 52/98, José Miguel Atahualpa Inga, Perú.

32. The Commission therefore concludes that for purposes of admissibility, the petitioners' allegations could, prima facie, tend to establish violations of human rights, particularly the rights recognized in Articles 5(1), 5(2), 5(3), 5(4), 5(6) and 25 of the American Convention in connection to Article 1(1) to the detriment of the Challapalca Prison inmates who had been transferred there from Yanamayo prison on September 21, 2001. The Commission also considers the petition admissible with regard to the alleged violations of the Inter-American Convention to Prevent and Punish Torture.

V. CONCLUSIONS

33. In the present report, the IACHR has established that the petition is admissible under Article 47(a) of the American Convention. Based on the arguments of fact and of law made herein,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible, which concerns violation of the Inter-American Convention to Prevent and Punish Torture and Articles 5(1), 5(2), 5(3), 5(4), 5(6) and 25 of the American Convention on Human Rights in connection to Article 1(1), to the detriment of the Challapalca Prison inmates who had been transferred there from Yanamayo prison on September 21, 2001.
2. To declare the present petition admissible under Article 5 of the American Convention on Human Rights to the detriment of the relatives of the Challapalca Prison inmates who had been transferred there from Yanamayo prison on September 21, 2001.
3. To continue with the analysis of the substance of the question.

4. To notify the petitioners and the State of this decision.
5. To place itself at the disposal of the parties with a view to achieving a friendly settlement based on respect for the rights enshrined in the American Convention on Human Rights and to invite the parties to decide on this possibility.
6. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 27th day of February in the year 2004. Signed: José Zalaquett, Chairman; Clare Kamau Roberts, First Vice-President; and Commissioners Evelio Fernández Arévalo, Paulo Sérgio Pinheiro, Freddy Gutiérrez, and Florentín Meléndez.